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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 744

AMILCAR J. TROSCLAIR,
Petitioner,

vs.

STANOLIND OIL & GAS COMPANY
and
STANDARD SURETY & CASUALTY COMPANY
OF NEW YORK,
Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI.

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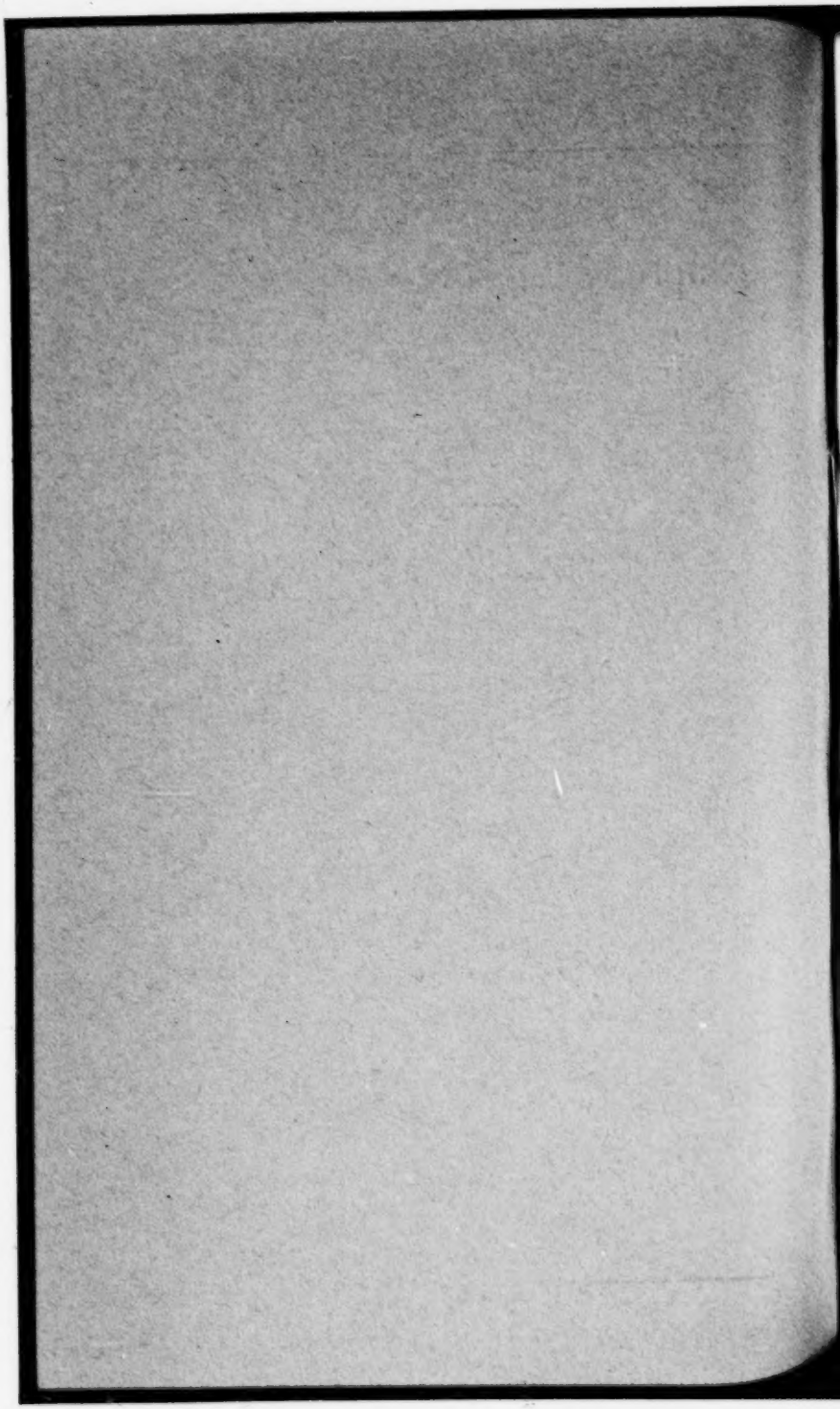

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SUMMARY

1.

There was no conflict between the testimony of R. W. Wiggins, who was employed by Standolind Oil & Gas Company as a "tool pusher" and that of P. E. Stutes, part owner and manager of the "Evangeline Hotel Garage".

2.

The testimony of P. E. Stutes is consistent in all respects and no effort was made to attack his credibility during the trial of the case. The same argument presented in the petition for certiorari, i. e., that the testimony of Stutes was contradictory, was urged before the United States Circuit Court of Appeals, Fifth Circuit, and that court held that the essential facts were established "without dispute".

3.

Under Louisiana law, where a custom is shown of making a delivery of or sending for automobiles serviced or to be serviced by the garage, that custom becomes part of the service rendered by the garage and makes the garage owner an independent contractor with respect to the service, from the time he takes possession of the car, until it is actually returned.

4.

There is no special and important reason why this case should be reviewed on writ of certiorari.

ARGUMENT

First

The petition for certiorari and brief in support thereof makes the broad and unsupported statement that there are inconsistencies in the testimony of R. W. Wiggins and P. E. Stutes. However, when we read the brief, we find no such inconsistencies pointed out.

Second

The burden of petitioner's complaint is found on Page 17 of the brief, as follows:

"That is to say, *Stutes' testimony is contra-*

dictory as to whether his going to the home of an owner or driver of an automobile and driving it to his garage for washing and lubrication was a 'custom' or 'practice' or an 'accommodation'. He was nevertheless certain that no extra charge was made for rendering the extra service." (Emphasis by Petitioner)

We find it hard to visualize a distinction between the words "custom" and "practice". Reference to any recognized dictionary will show that the word "custom" is defined as "a usage or practice"; and, similarly, the word "practice" is defined as "repeated or customary action". The word "accommodation" assuredly has a different meaning, but the record does not substantiate the statement that Stutes testified that the service performed in driving Wiggins to his home and in then returning to the garage to service the car was an "accommodation" to Wiggins. The only use of the word "accommodation" in the record was as follows:

Q. "And that was just a friend of your firm's that you were accommodating by taking the car to them if they asked?"

A. "Anyone if they would come and ask me to take them home I would do it because it was part of my business."

The Court:

Q. "As an accommodation?"

The Witness:

A. "Yes, sir." (P. 233)

Of course, the performance of any service without extra charge is an "accommodation" but in the instant suit, the evidence shows beyond dispute that all customers making a request for similar service were "accom-

modated" as a matter of custom and as a part of Stutes' business.

The same argument was advanced before the United States Circuit Court of Appeals, Fifth Circuit, which court said:

> "It is without dispute that the Evangeline Auto Hotel, as a part of its business, customarily sent for cars to be serviced at its garage and delivered them after servicing; and that the garage's regular charges were sufficient to take care of this service as a part of its general overhead. These facts being established, it was error to overrule the motion by both defendants for a directed verdict and to overrule the subsequent motions for judgment notwithstanding the verdict."
>
> (*Stanolind Oil & Gas Company, et al vs. Trosclair,* 166 Fed. (2d) 229.)

Third

The brief in support of the petition for certiorari gratuitously states that the court below failed to apply the applicable law of the State of Louisiana and disregarded the same. To the contrary, it will be found that the court below predicated its decision upon the cases of *Landry v. McNeil Hunter Motor Company,* 11 La. App. 380, 122 So. 293; *Pugh v. Henritzy, et al,* 151 So. 668; and *Andres v. Cox,* 223 Mo. App. 1139, 23 S.W. (2d) 1066, 1070, (this latter case having been quoted with approval in the *Pugh* case.)

Counsel for petitioner glosses over the case of *Landry v. McNeil Hunter Motor Company, supra,* by stating that the case was not tried before a jury and it would not support the conclusion reached by the court below. However, the court below was of an entirely

different opinion as evidenced by the following excerpt from its decision:

> "The Court of Appeal, First Circuit, of the State of Louisiana had before it in *Landry v. McNeil Hunter Motor Co., Inc. et al*, 11 La. App. 380, 122 So. 293, a case almost identical with the case at bar. The facts and the law applicable thereto are set out in the body of the court's opinion in these words:
>
> > "It appears that A. L. Daboval, a rice grader and an employee of the Acadia Rice Mills, drove a Ford Sedan, the property of the Rice Mills, to the McNeil Hunter Garage, in order to have broken glasses inclosing the top of the Ford Sedan replaced with new whole glasses. That was the only repair which was indicated as the purpose of bringing the Ford to the garage. Daboval spoke to Hoffpauir, foreman of the garage, who told him that the job would require an hour or two. A heavy rain was falling at the time, and at the request of Daboval, Hoffpauir directed Archie Morgan, a mechanic in the employ of the repair shop, to go with Daboval to the rice mill, some 8 to 10 blocks distant, and bring back the Ford to make the repairs requested. Morgan got into the automobile, sat next to Daboval and when they reached the rice mill, Daboval got out and Morgan moved over into the driver's seat and started back to the garage. * * * (On the way back, the mechanic ran the car into and injured Landry.)
>
> > * * * * *
>
> > "At the time of the accident the Ford sedan was in the possession of and under the control of the McNeil Hunter Motor Company. Morgan accompanied Daboval to the rice mill, not as agent of the rice mill, but

> as an employee of the motor company, upon the instructions of Hoffpauir, foreman of the shop. Of this we believe there is not question or doubt. *It is shown that it was customary for the motor company to accept delivery of automobiles to be repaired, wherever the customer might request, in the town of Rayne, and that return delivery from the motor company to the owner of the automobile was, upon request, made in the same manner, without reservation of nonliability in case of accident.* It therefore seems to follow as a consequence that when Daboval got out of the automobile at the rice mill, delivery to Morgan was delivery to the motor company." (Emphasis added by court)

In respect to the case of *Pugh v. Henritzy, supra,* counsel for petitioner refers to the fact that the charge of $7.50 for making repairs to the automobile included the service of the garage man in bringing plaintiff's wife home and returning the car to be repaired. We particularly point out that no reference was made to the payment of any "extra sum", but merely to the fact that the charge for the repairs included the service of the garage man in bringing the owner's wife home and returning the car to be repaired. The identical same set of facts exists in the present case by the uncontradicted testimony of Stutes that his charges were adjusted to include the service of himself and his employees in bringing the owners of the cars to their homes and then returning the cars to the garage. The court cited with approval the case of *Andres v. Cox, supra,* wherein we find the following language:

> " * * * In the absence of a contract or *custom,* the bailee of a car, for the purpose of making repairs upon it, is under no obligation to

> make delivery of the car to the owner, either at his place of business or his residence. *Marron v. Bohannan*, 104 Conn. 467, loc. cit. 470, 133 A. 667, 46 A.L.R. 838. *In the present case no custom of making such delivery was shown. So far as the* (fol. 302) *evidence shows, Redel never delivered cars upon which he had made repairs to the owners at their homes of places of business, or at any other place from his repair shop,* except that on a number of occasions he delivered the appellant's car to her at her home, and this was done as a mere accommodation or favor, and only as suited his convenience, and without any obligation to do so." (Emphasis by court)

After giving consideration to all applicable law of the State of Louisiana, the court below said:

> "Under Louisiana law, as reflected by these cases, where a custom is shown of making delivery of or sending for automobiles serviced or to be serviced by the garage, that custom becomes part of the service rendered by the garage and makes the garage owner an independent contractor with respect to the service, from the time he takes possession of the car until its actual return. This is in accordance with the general rule. See 5 Blashfield, Cyclopedia of (fol. 303) Automobile Law and Practice, § 2966, p. 103; and cases cited in annotations appearing in 46 A.L.R. 840."

We suggest that the court below gave thorough consideration to the case in its entirety and assuredly applied the Louisiana law as reflected in its jurisprudence.

Fourth

In conclusion, we refer to the Rules of the Supreme Court, Rule 38, Section 5 (b). We suggest that the instant case does not present any special or important

reason why a writ of certiorari should be granted. We are concerned with an ordinary damage suit arising out of an intersectional automobile accident and the only person to whom the case is important is petitioner. The question of local law was correctly resolved by the court below, but in any event, we cannot conceive that the question was of particular significance or importance to the jurisprudence of Louisiana or of the United States.

Respectfully submitted,

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